No. 15843

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

PETER CHAUNT,

Appellant,

vs.

UNITED STATES OF AMERICA,

Respondent.

APPELLANT'S REPLY BRIEF.

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TABLE OF AUTHORITIES CITED

Cases

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I.

(1) The Government, it appears, does not begin to grasp the implications of *Nowak* and *Maisenberg.** Appellant's concealment of membership in the Communist Party as found below lends no support to the judgment unless the membership was accomplished by disaffection toward the United States. For, contrary to the findings (Appx. E, p. 4, par. VI)** it did not "violate the requirements" of the Nationality Act of 1906, which was not concerned with the Communist Party. Nor would disclosure of membership have answered whether Appellant was "attached to the principles of the Constitution." That could be gauged not by such a mechanical test, but by questions about his attitude toward Con-

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**Nowak v. United States,* 356 U. S. 660; *Maisenberg v. United States,* 356 U. S. 670.

**References to appendices are, of course, to those in the Government's brief.

stitutional and other principles of government. (*Cf. Maisenberg v. United States, supra,* at p. 673.) Those questions were not asked.

(2) Moreover, there is no finding as to *how* appellant concealed his membership. Presumably we are to understand that it was, in part, by answering that he belonged to the "Fraternal Benefit Society of Internation (*sic*) Workers Order." [Govt. Ex. 2-G, Appx. B.] But the testimony shows that the question was ambiguous, especially as to time [R. 33-34]; organizations belonged to *when?* The other answer is the "no" to the question, "Do you believe in Communism, Fascism or Nazism?" [Finding V, Appx. E, pp. 6-7.] This too is totally uncertain. (*Nowak v. United States, supra.*)

(3) The findings of non-attachment, in the teeth of *Maisenberg,* are made expressly "by reason of defendant's membership in, and his knowledge of the nature and principles of the Communist Party" and no other. [Finding V, Appx. E, p. 7.] Both the wording of the finding (lifted from the complaint), and the character of the evidence, make it obvious that the "membership" carries the "knowledge" with it; knowledge in effect is presumed or inferred from the fact, the nature, of the membership. But this does not do, under *Nowak* and *Maisenberg* or, for that matter, *Schneiderman* and *Yates.**

It is true here, as it was in *Maisenberg,* that there is no evidence of

> "any expression from the defendant with regard to his own state of mind at and prior to the time he took the oath of naturalization." (Govt. Br. p. 22.)

**Schneiderman v. United States,* 320 U. S. 118; *Yates v. United States,* 354 U. S. 298.

Neither in that case nor in this was there evidence that the defendant *himself* "ever advocated revolutionary action or that (he) was aware that the Party proposed to take such action."* Yet without proof the judgment falls.

The findings [VI, VII and VIII, Appx E. pp. 8-10] seek to surmount this gap by extension. From the premise of membership they leap to elaborate conclusions of non-attachment. But it is a futile process. For, search the record from end to end, there is nothing to support all of this but the "fact that (Chaunt) was an active member and functionary in the party . . ." (356 U. S. 660, 665-666.) That, despite the Government's despairing questions (Br. p. 31) is not enough.

II.

(4) As to the arrests, the Government believes (Br. p. 35) that the burden of proving their illegality should be borne by the appellant. But this is a *denaturalization* case; the burdens sit heavy and may not be shifted. And even though a presumption of validity might rescue the Government if it alleged arrests for burglary or rape, none arises here. For, as we showed in our opening brief (p. 9), at least two of these were made under ordinances which on their face, flout the First and Fourteenth Amendments.

(5) We agree with the Government (p. 39) that in passing on an applicant for citizenship "his *conduct* is the crucial factor." (Their emphasis.) Precisely. The fact that he may have been falsely arrested—once, twice or thrice—sheds absolutely no light on the subject, tells nothing whatsoever about *his* conduct. Nor is the case

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*356 U. S. 670, 673.

better for the Government's view if it should be that the arrests occurred in connection with, or *because of,* the appellant's exercise of rights secured by the First Amendment.

III.

(6) The fact that the Supreme Court has never applied the doctrine of *res judicata* to denaturalization judgments in other cases seems slight reason against its application in this case. At least it is of feather weight against recognition that this is the sort of case in which the defense would—and should—apply.

The Government fears that to adopt it here would put a premium on perjury in citizenship proceedings. (Br. p. 68.) But that danger is no less present in other cases. Under our law protection against perjury is furnished by the criminal codes and by the probing search for truth afforded by cross-examination in an adversary setting. It has never been thought to lie in paper judgments, readily overturned by any breadth of doubt about the trial. Decrees of naturalization, like other status judgments (*Schneiderman v. United States, supra*) especially require finality. It is paradoxical to deny them the means of assuring it.

Respectfully submitted,

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